

FILE COPY
No. 19

U.S. DISTRICT COURT
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

OKLAHOMA PACKING COMPANY, FORMERLY WILSON
& CO., INC., OF OKLAHOMA, AN OKLAHOMA CORPORATION,
AND WILSON & CO., INC., OF OKLAHOMA, A
DELAWARE CORPORATION,

Petitioners,

vs.

OKLAHOMA GAS AND ELECTRIC COMPANY, A CORPORATION;
OKLAHOMA NATURAL GAS COMPANY, A CORPORATION;
W. T. PHILLIPS, JR., H. J. CRAWFORD, J. V. RITTS,
LEONARD C. RITTS, R. W. HANNAN, A. W. LEONARD,
AND R. C. SHARP, THE DIRECTORS OF OKLAHOMA NATURAL GAS
COMPANY, A DISSOLVED CORPORATION; AND OKLAHOMA NATURAL GAS
CORPORATION,

Respondents.

**PETITIONERS' MOTION TO RECALL MANDATE AND FOR LEAVE
TO FILE THEIR PETITION FOR REHEARING.**

W. R. BROWN,
PAUL WARE,

Counsel for Petitioners.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

No. 19.

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& CO., INC., OF OKLAHOMA, AN OKLAHOMA CORPORATION,
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GAS COMPANY, A DIS-SOLVED CORPORATION;
AND OKLAHOMA NATURAL GAS CORPORATION,

Respondents.

**PETITIONERS' MOTION TO RECALL MANDATE
AND FOR LEAVE TO FILE THEIR PETITION FOR
REHEARING.**

Come now petitioners in the above-entitled cause and respectfully move this Honorable Court to recall the mandate heretofore issued on January 19, 1940, to the Clerk of the United States District Court for the Western Dis-

trict of Oklahoma, and for leave to file their petition for rehearing, for the reason that this Court, we respectfully submit, has misapprehended the decision of the Supreme Court of Oklahoma in *Community Natural Gas Co. v. Corporation Commission*, 182 Okla. 137, as more fully appears in said petition which is tendered herewith.

WHEREFORE, petitioners pray that an order of this Court be entered in accordance with the foregoing motion.

Dated at Chicago, Illinois, this 22nd day of January, 1940.

W. R. BROWN,

PAUL WARE,

Counsel for Petitioners.

CERTIFICATE OF COUNSEL

I, Paul Ware, Counsel for the above-named petitioners, do hereby certify that the foregoing motion is presented in good faith and not for delay.

PAUL WARE,

Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

No. 19.—OCTOBER TERM, 1939.

Oklahoma Packing Co., formerly Wil-
son & Co. of Oklahoma et al., Peti-
tioners,

vs.

Oklahoma Gas & Electric Co. et al.

On Writ of Certiorari to
the Circuit Court of Ap-
peals for Tenth Circuit.

[December 4, 1939.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

The case concerns a rate controversy which has been winding its

No. 19. Oklahoma Packing Company, formerly Wilson & Co., Inc., of Oklahoma, et al., petitioners, v. Oklahoma Gas and Electric Company et al. The decision of the Supreme Court of Oklahoma in *Community Natural Gas Co. v. Corporation Commission*, 182 Okla. 137, having been brought to the attention of this Court for the first time in the petition of respondents for a rehearing of the disposition made of this cause in the opinion delivered on December 4, 1939, that opinion is hereby withdrawn and replaced by the opinion of this day. The petition for rehearing is denied.

enarge, Gas & Electric gave a supersedeas bond. Gas & Electric lost its appeal, *Oklahoma Gas & Electric Co. v. Wilson & Co.*, 146 Okla. 272, and Wilson & Co. brought suit on the bond. That suit was instituted in one of the district courts of Oklahoma. To enjoin prosecution of the latter suit Gas & Electric invoked the jurisdic-

¹ A history of the controversy is to be found in *Oklahoma Gas & Electric Co. v. Wilson & Co.*, 146 Okla. 272; *Oklahoma Gas & Electric Co. v. Wilson & Co.*, 54 F. (2d) 596; *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, 6 F. Supp. 893; *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, 292 U. S. 886; *Oklahoma Gas & Electric Co. v. Wilson & Co.*, 178 Okla. 604; *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, 100 F. (2d) 770.

² Oklahoma Natural Gas Co. and Oklahoma Gas and Electric Co., both engaged in the sale of natural gas in and about Oklahoma City, had agreed to a division of territory. Under that agreement, Wilson & Co. bought gas from Gas & Electric. The Oklahoma Corporation Commission found that Natural Gas had held itself out to provide gas to industrial consumers at a lower rate than that at which Wilson & Co. was able to buy from Gas & Electric. The Commission then ordered Natural Gas to provide Wilson & Co. with its gas at prevailing industrial rates. Both Natural Gas and Gas & Electric resisted the order. Natural Gas contended that it had never held itself out to industrial consumers; Gas & Electric claimed that it was being unconstitutionally deprived of its right to sell to Wilson & Co. at the higher rate. If, pending appeal from the Commission, the order were not stayed, Wilson & Co. would have been able to purchase gas from Natural Gas at the lower rate and Gas & Electric would have been forced either to lower its rate

tion of the United States District Court for the Western District of Oklahoma.³ This relief was granted and sustained by the Circuit Court of Appeals. *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 100 F. (2d) 770. Since the case in part was in conflict with the Second Circuit's decision in *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 103 F. (2d) 765, and also presented novel aspects of important questions of federal law, we granted certiorari, 307 U. S. —. We are not concerned with the merits of the Commission's order.

At the threshold we are met by the procedural objection, seasonably made; that Wilson & Co., a Delaware corporation, was improperly sued in the District Court of the Western District of Oklahoma. The objection is unavailable. Prior to this suit, Wilson & Co. had, agreeable to the laws of Oklahoma, designated an agent for service of process "in any action in the State of Oklahoma." Both courts below found this to be in fact a consent on Wilson & Co.'s part to be sued in the courts of Oklahoma upon causes of action arising in that state. The Federal District Court is, we hold, a court of Oklahoma within the scope of that consent, and for the reasons indicated in *Neirbo Co. et al. v. Bethlehem Shipbuilding Corp.* decided November 22, 1939, Wilson & Co. was amenable to suit in the Western District of Oklahoma.

Petitioners further urge (1) that their plea of *res judicata* should have been sustained and (2) that § 265 of the Judicial Code (Act of March 3, 1911, 36 Stat. 1162; 28 U. S. C. § 379, derived from the Act of March 2, 1793, 1 Stat. 334), was a bar to the suit.

The claim of *res judicata* is based on the prior determination in 1930 by the Supreme Court of Oklahoma that the contested order of the Corporation Commission was valid. *Oklahoma Gas & Elec. Co. v. Wilson & Co.*, 146 Okla. 272. The theory of the present bill, filed in 1932, was that the review which the Oklahoma Supreme Court afforded the respondents in 1930 was "legislative" rather than "judicial" in character, and therefore left open the judicial review sought below. After the bill was filed but before the injunction now challenged was decreed, the Oklahoma Supreme Court held

³ In 1928 Natural Gas complied with the order; and since that time Wilson & Co. has been buying gas at the lower rate prescribed by the Commission. The sole question now involved in these proceedings is the liability of Gas & Electric to Wilson & Co. for alleged overcharges between 1926 and 1928. The District Court found specifically that the Corporation Commission had made no threat to enforce penalties for violations of the 1926 order, and as to the Commission, declined to grant any injunctive relief. Cf. *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, 292 U. S. 386, 390.

that its decision in a case like that of *Oklahoma Gas & Elec. Co. v. Wilson & Co.*, *supra*, was a judicial judgment. *Oklahoma Cotton Ginners' Association v. State*, 174 Okla. 243.

In view of the authoritative construction thus placed by the highest court of Oklahoma on what it had done in 1930, the respondents had in fact been accorded by the Oklahoma Supreme Court judicial review of precisely the same legal issues which it sought to re-litigate in this suit.⁴ And by its decree in this suit the District Court made an adjudication in direct conflict with that made by the Oklahoma Court seven years earlier.

This, it is suggested, is to confound the fog, in which the scope of review of the Oklahoma Supreme Court was shrouded in 1930, with the clarity of adjudication made explicit by the *Ginners'* case in 1935. But for centuries our law has been operating on such notions of relation and in situations far more drastic and trying to individual litigants than this case presents. See *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U. S. 358; Holmes, J., dissenting in *Kuhn v. Fairmont Coal Co.*, 215 U. S. 349, 370. It is part of the price paid for the overriding benefits of a system of justice based on more or less general principles as against *ad hoc* determinations. For, in holding that its review of the order of the Corporation Commission was a judicial determination and therefore an adjudication of the issues sought to be re-litigated here, the Oklahoma Supreme Court did not profess to make new law or to change the old. Even if it had, and had retrospectively given judicial significance to its action in 146 Okla. 272, *res judicata* would still come into play and the only basis for relief could be an appeal to *stare decisis*. But the discouraging history of such a juristic sport as was the doctrine of *Gelpcke v. Dubuque*, 1 Wall. 175, admonishes us to adhere to a state court's declaration of its own law even though it has had a checkered unfolding. See Mr. Justice Holmes, dissenting, in *Muller v. Harlem Railroad Co.*, 197 U. S. 544, 574. But here we are not presented with the recondite difficulties of a situation comparable to *Gelpcke v. Dubuque*. The state court, as we have already indicated, did not go back on its past; it merely clarified what it had previously done.

The present case, therefore, presents a situation very different from that dealt with in *Corporation Commission v. Cary*, 296 U. S. 452. That case merely decided that the grant of an interlocutory injunction to stay enforcement of a Commission order was not an

⁴ From this judicial determination by the Oklahoma Supreme Court, no review was sought here.

improvident exercise of judicial discretion" when at the time the decree issued the Oklahoma decisions left doubts whether or not the state law afforded judicial review, as required by the Johnson Act. (Act of May 14, 1934, 48 Stat. 775.)

Whether a state court decision serves to foreclose future litigation in the federal courts of course depends on the applicability of the state law of *res judicata* to the particular decision. *Union and Planters Bank v. Memphis*, 189 U. S. 71; *Covington v. First National Bank*, 198 U. S. 100; *Wright v. Georgia R. R. and Banking Co.*, 216 U. S. 420. In the absence of any peculiar local doctrine the generally accepted principles of *res judicata* will be assumed to govern. Nor will a particular decision be deemed excepted from the scope of *res judicata* unless the state court has explicitly so indicated. We have not learned of any Oklahoma departure from the general notions of *res judicata*. Nor has the Oklahoma Supreme Court, with full opportunity for reviewing the course of litigation arising out of the particular order, indicated that its decision of 1930 (146 Okla. 272), recognized by it as a judicial adjudication, is not to have one of the most important incidents of a judicial adjudication—finality for purposes of re-litigation.

The reliance which is placed upon *Oklahoma Gas and Electric Co. v. Wilson & Co.*, 178 Okla. 604, carries no such significance. To be sure, in that case the Oklahoma Supreme Court reversed a lower court judgment in favor of Wilson & Co. in the action which later was stayed by the District Court in the present proceedings. The Oklahoma Supreme Court did not hold that its determination in the earlier proceeding was not a final adjudication, but merely sought to define and accept the jurisdiction of the federal court in view of the uncertainty as to state law at the time federal jurisdiction was invoked. We interpret this action of the Oklahoma Supreme Court as a generous application of the doctrine of comity between state and federal courts. But in staying action in the state court to await disposition of the controversy in the federal court, the Oklahoma Supreme Court merely gave the federal court right

5 "In that instant case, in view of the fact that the defendants' right to a judicial remedy in the state courts was uncertain, the Federal court acquired jurisdiction of the cause initiated therein by defendants. That remedy was available to them as the only certain method of obtaining a judicial determination of the validity of the Commission's order. The suit was a direct attack upon such order, and until its validity was established in that suit the state court was without jurisdiction to proceed with an action based upon such order. This for the reason that where direct attack in equity is made upon the order of the Commission the defendants' liability on such order is not finally determined judicially until the final determination of the equitable action." 178 Okla. 604, 606.

of way to settle all relevant issues appropriately raised in the federal action. One of these issues was whether or not the 1930 decision of the Oklahoma Supreme Court had foreclosed further litigation in the federal court. That depended on whether or not the 1930 decision was a judicial adjudication. The holding in the *Ginnery*' case was that it was. In its 1936 decision (178 Okla. 604) the Oklahoma Supreme Court did not say, though it could have said, that its review of this very order was not judicial. On the contrary, it said that it was judicial. The situation would, of course, be wholly different had the Supreme Court of Oklahoma deemed its review in 146 Okla. 272 to have been legislative in character and as such incapable of generating *res judicata*. *Prentiss v. Atlantic Coast Line Co.*, 211 U. S. 210, 227. We must therefore attach to its earlier judicial determination that characteristic finality which is the essence of *res judicata*.

But even if the validity of the order passed upon in 1930 (146 Okla. 272) could have been re-litigated under Oklahoma law, it should have been allowed to be so litigated in the Oklahoma courts. Whatever else the Oklahoma Supreme Court may have given to a federal district court by a show of comity, it could not have given it authority denied by Congress. The District Court exercised its jurisdiction to "stay proceedings" previously begun in the state court. Inasmuch as the scope of the present suit is precisely the same as that of the action in the state court which this suit sought to restrain, § 265 of the Judicial Code⁶ operates as a bar upon the district court's power. The injunction below is within the plain interdiction of an act of Congress, and not taken out of it by any of the exceptions which this Court has heretofore engrafted upon that act. Compare *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239; *Simon v. Southern Railway*, 236 U. S. 115; *Wells, Fargo & Co. v. Taylor*, 254 U. S. 175. See Warren, "Federal and State Court Interference," 43 Harv. L. Rev. 354, 372-77. That the injunction which issued below was a restraint of the parties and not a formal restraint upon the state court itself, is immaterial. *Hill v. Martin*, 296 U. S. 393, 403. Cf. *Kohn v. Central Distributing Co.*, 306 U. S. 531.

The judgment below is reversed, with directions to dismiss the bill.

Reversed.

⁶ Sec. 265 provides: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

SUPREME COURT OF THE UNITED STATES.

No. 19.—OCTOBER TERM, 1939.

Oklahoma Packing Company, formerly
Wilson & Co., Inc., of Oklahoma,
et al., Petitioners,

vs.

Oklahoma Gas & Electric Company,
et al.

On Writ of Certiorari to
the United States Cir-
cuit Court of Appeals
for the Tenth Circuit.

[December 4, 1939.]

Mr. Chief Justice HUGHES.

I concur in the reversal of the judgment upon the ground that Wilson & Co., a Delaware corporation, was not amenable to suit in the Federal District Court in Oklahoma. The question is essentially the same as that presented in No. 38, *Neirbo v. Bethlehem Shipbuilding Corporation*, decided November 22, 1939, and what was said in the dissenting opinion in that case need not be repeated here. (See, as to the scope of the consent under the Oklahoma statute, the observations of the Circuit Court of Appeals in the *Neirbo* case, 103 F. (2d) 765, 769.)

But if it be granted that the Delaware corporation was amenable to the process in question, I am unable to agree that the complainants should be denied relief because of the defense of *res judicata*. The judgment to which this effect is given was rendered by the Supreme Court of Oklahoma in 1930, sustaining, on appeal, an order of the Corporation Commission requiring gas to be furnished to Wilson & Co. at a specified rate. *Oklahoma Gas & Electric Co. v. Wilson & Co.*, 146 Okla. 272. At the time of that decision, the review by the Supreme Court of Oklahoma of such an order of the Corporation Commission was considered to be legislative in character. *Oklahoma Gas Co. v. Russell*, 261 U. S. 290, 291; *McAlester Gas & Coke Co. v. Corporation Commission*, 101 Okla. 268, 270; *City of Poteau v. American Indian Oil & Gas Co.*, 159 Okla. 240, 242, 243, in which the state court cited with approval the decision to that effect of the Circuit Court of Appeals in *Oklahoma Gas & Electric Co. v. Wilson & Co.*,

54 F. (2d) 596, 598, 599, applying the Oklahoma decisions. Compare *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, 292 U. S. 386, 388; *Corporation Commission v. Cary*, 296 U. S. 452, 458. The contention of the complainants before the state court was that the Commission's order violated their rights under the Federal Constitution. 146 Okla. 272, 281, 288. But in the view, as then held, that the action of the state court was legislative in character, no appeal lay to this Court from the state court's determination of the federal question. *Prentiss v. Atlantic Coast Line Co.*, 211 U. S. 210, 226, 227; *Oklahoma Gas Co. v. Russell*, *supra*. Accordingly, the complainants brought this suit in the Federal Court to enjoin the enforcement of the Commission's order.

It was not until several years later (in 1935) that the Oklahoma Supreme Court decided, in a suit between other parties, that its action in reviewing such an order of the Commission was judicial and not legislative in character. *Oklahoma Cotton Ginners Association v. State*, 174 Okla. 243. The manifest injustice of holding that complainants are bound by the state court's ruling in 1930 as a judicial determination, when at that time under the state court's construction of the state constitution the complainants were not at liberty to treat the ruling as a judicial determination and to obtain a review of the federal question by this Court upon that ground, is not met, as it seems to me, by invoking the general doctrine of *res judicata*.

Whether the judgment of a state court is *res judicata* is a question of state law. The federal courts are not bound to give such domestic judgments any greater force than that awarded them by the courts of the State where rendered. *Union & Planters Bank v. Memphis*, 189 U. S. 71, 75; *Covington v. First National Bank*, 198 U. S. 100, 109; *Wright v. Georgia R. R. & Banking Co.*, 216 U. S. 420, 429. I think that we are not at liberty to assume that the Oklahoma court would so far depart from the plain requirements of justice as to preclude in these circumstances a review of the federal question in a court of competent jurisdiction. The state court has not spoken to that effect and what the state court has said I think clearly imports the contrary.

This appears from its decision in *Oklahoma Gas & Electric Co. v. Wilson & Co.*, 178 Okla. 604. That was an action in the state court on the supersedeas bond given on the appeal to the Supreme Court from the Commission's order in question, and Wilson & Co., the

plaintiff, had judgment. The Supreme Court reversed that judgment and directed a stay pending the determination in this very suit in the federal court of the validity of the Commission's order. The Supreme Court expressly referred to its decision, in 1935, in *Oklahoma Cotton Ginners Association v. State, supra*, that its action in reviewing orders of the Commission affecting rates of public utilities constituted a judicial determination of the questions involved. But instead of holding that the ruling in 1930, upon the order now under review, constituted a final adjudication of the validity of that order, the Supreme Court held that the question of validity was an open one for determination by the federal court in the present suit. After saying that in view of the uncertainty with respect to the "right to a judicial remedy in the state courts," the federal court had acquired jurisdiction of this suit, the state court concluded as follows:

"That remedy was available to them as the only certain method of obtaining a judicial determination of the validity of the commission's order. The suit was a direct attack upon such order, and until its validity was established in that suit, the state court was without jurisdiction to proceed with an action based upon such order. This for the reason that where direct attack in equity is made upon the order of the commission, the defendants' liability on such order is not finally determined judicially until final determination of the equitable action".

If under the state law as thus declared in Oklahoma upon consideration of the particular circumstances of this case, liability on the Commission's order is not finally determined judicially until the determination of that question in this equity suit, I am at a loss to understand how the action of the state court on the 1930 appeal can be regarded as *res judicata* and thus a bar to that determination.

The decree below enjoining enforcement of the Commission's order appropriately followed the determination of its invalidity. The point that the decree should not have gone further and enjoined the prosecution of the action in the state court upon the supersedeas bond is at best only one of technical importance, as the state court itself enjoined such proceedings pending the determination of this suit, apparently in the view that a determination herein of the invalidity of the order would dispose of the merits.

Mr. Justice McREYNOLDS and Mr. Justice ROBERTS join in this opinion.

SUPREME COURT OF THE UNITED STATES.

No. 19.—OCTOBER TERM, 1939.

Oklahoma Packing Co., formerly Wilson & Co. of Oklahoma et al., Petitioners,

vs.

Oklahoma Gas & Electric Co. et al.

On Writ of Certiorari to the Circuit Court of Appeals for Tenth Circuit.

[January 15, 1940.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

The case concerns a rate controversy which has been winding its slow way through state and federal courts for thirteen years.¹ While the relationship of two utilities with Wilson & Co., a consumer of natural gas, complicates the situation, the legal issues before us may be disposed of as though this were a typical case of a utility resisting an order reducing its rates.² Oklahoma Gas & Electric Company (hereafter called Gas & Electric) appealed to the Oklahoma Supreme Court from such an order by the Oklahoma Corporation Commission. The reduction was stayed pending

¹ A history of the controversy is to be found in Oklahoma Gas & Electric Co. v. Wilson & Co., 146 Okla. 272; Oklahoma Gas & Electric Co. v. Wilson & Co., 54 F. (2d) 596; Oklahoma Gas & Electric Co. v. Oklahoma Packing Co., 6 F. Supp. 893; Oklahoma Gas & Electric Co. v. Oklahoma Packing Co., 292 U. S. 386; Oklahoma Gas & Electric Co. v. Wilson & Co., 178 Okla. 604; Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 100 F. (2d) 770.

² Oklahoma Natural Gas Co. and Oklahoma Gas and Electric Co., both engaged in the sale of natural gas in and about Oklahoma City, had agreed to a division of territory. Under that agreement, Wilson & Co. bought gas from Gas & Electric. The Oklahoma Corporation Commission found that Natural Gas had held itself out to provide gas to industrial consumers at a lower rate than that at which Wilson & Co. was able to buy from Gas & Electric. The Commission then ordered Natural Gas to provide Wilson & Co. with its gas at prevailing industrial rates. Both Natural Gas and Gas & Electric resisted the order. Natural Gas contended that it had never held itself out to industrial consumers; Gas & Electric claimed that it was being unconstitutionally deprived of its right to sell to Wilson & Co. at the higher rate. If, pending appeal from the Commission, the order were not stayed, Wilson & Co. would have been able to purchase gas from Natural Gas at the lower rate and Gas & Electric would have been forced either to lower its rates to meet the competition or to lose the business.

the appeal, but to protect Wilson & Co. against a potential overcharge, Gas & Electric gave a supersedeas bond. Gas & Electric lost its appeal, *Oklahoma Gas & Electric Co. v. Wilson & Co.*, 146 Okla. 272, and Wilson & Co. brought suit on the bond. That suit was instituted on December 3, 1931, in one of the district courts of Oklahoma. To enjoin prosecution of the latter suit Gas & Electric on May 20, 1932, invoked the jurisdiction of the United States District Court for the Western District of Oklahoma.³ After a complicated series of moves in both state and federal courts, not necessary here to detail, this relief was granted by the District Court on September 10, 1937, and on December 19, 1938, sustained by the Circuit Court of Appeals. *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 100 F. (2d) 770. Since the case in part was in conflict with the Second Circuit's decision in *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 103 F. (2d) 765, and also presented novel aspects of important questions of federal law, we granted certiorari, 307 U. S. —. We are not concerned with the merits of the Commission's order.

At the threshold we are met by the procedural objection, seasonably made, that Wilson & Co., a Delaware corporation, was improperly sued in the District Court of the Western District of Oklahoma. The objection is unavailable. Prior to this suit, Wilson & Co. had, agreeable to the laws of Oklahoma, designated an agent for service of process "in any action in the State of Oklahoma." Both courts below found this to be in fact a consent on Wilson & Co.'s part to be sued in the courts of Oklahoma upon causes of action arising in that state. The Federal District Court is, we hold, a court of Oklahoma within the scope of that consent, and for the reasons indicated in *Neirbo Co. et al. v. Bethlehem Shipbuilding Corp.*, decided November 22, 1939, *ante* p. —, Wilson & Co. was amenable to suit in the Western District of Oklahoma.

Petitioners further urge (1) that their plea of *res judicata* should have been sustained, and (2) that § 265 of the Judicial Act (Act

³ In 1928 Natural Gas complied with the order; and since that time Wilson & Co. has been buying gas at the lower rate prescribed by the Commission. The sole question now involved in these proceedings is the liability of Gas & Electric to Wilson & Co. for alleged overcharges between 1926 and 1928. The District Court found specifically that the Corporation Commission had made no threat to enforce penalties for violations of the 1926 order, and as to the Commission, declined to grant any injunctive relief. Cf. *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, 292 U. S. 386, 390.

of March 3, 1911, 36 Stat. 1162, 28 U. S. C. § 379, derived from § 5 of the Act of March 2, 1793, 1 Stat. 333, 335), was a bar to the suit.

The claim of *res judicata* is based on the prior determination in 1930 by the Supreme Court of Oklahoma that the contested order of the Corporation Commission was valid. *Oklahoma Gas & Electric Co. v. Wilson & Co.*, 146 Okla. 272. The pronouncements of the Oklahoma Supreme Court concerning the character of such a determination—whether under the Oklahoma Constitution it was a “legislative” or “judicial” review—have for a time, however, been ambiguous and fluctuating. After the present bill was filed but before the challenged injunction was decreed, the Oklahoma Supreme Court had held that its decision in cases like that of *Oklahoma Gas & Electric Co. v. Wilson & Co.*, was a judicial judgment. *Oklahoma Cotton Ginners’ Association v. State*, 174 Okla. 243. But, in *Community Natural Gas Co. v. Corporation Commission*, 182 Okla. 137, decided after the decree here in issue, the Oklahoma court formally characterized its review in cases prior to the decision in the *Ginners’* case as “legislative”, refused to give that decision retroactive effect, and therefore deemed the *res judicata* doctrine inapplicable to these prior reviews. Hence, the plea of *res judicata* in this case must fail, for on that issue state law is determinative here. *Union and Planters’ Bank v. Memphis*, 189 U. S. 71; *Covington v. First National Bank*, 198 U. S. 100; *Wright v. Georgia R. R. and Banking Co.*, 216 U. S. 420.

There remains, therefore, the applicability of § 265 of the Judicial Code.⁴ That provision would operate as a bar upon the power of the District Court to enjoin proceedings previously brought in the state court on the supersedeas bond, if “the only thing sought to be accomplished by this equitable action” is to stay the continuance of that action. Such was the construction placed upon the bill by the earlier District Court of three judges, and such was this Court’s assumption when the latter decision came here on appeal. *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, 6 F. Supp. 893, 895; *Oklahoma Gas & Electric Co. v. Oklahoma Packing*

⁴ Section 265 provides: “The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.”

4 *Oklahoma Packing Co. et al. vs.*

Oklahoma Gas & Electric Co. et al.

Co., 292 U. S. 386, 389. That case eliminated the Corporation Commission as party to the litigation. The District Court to which this Court remanded the matter summarized Gas & Electric's claim by way of answer to the action brought by Wilson & Co. in the state court as an attack upon the Commission's order "for substantially the same reasons as set out" in the present bill.

The present suit, therefore, is one for an injunction "to stay proceedings" previously begun in a state court. The decree below is thus within the plain interdiction of an Act of Congress, and not taken out of it by any of the exceptions which this Court has heretofore engrafted upon a limitation of the power of the federal courts dating almost from the beginning of our history and expressing an important Congressional policy—to prevent needless friction between state and federal courts. Compare *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239; *Simon v. Southern Railway*, 236 U. S. 115; *Wells Fargo & Co. v. Taylor*, 254 U. S. 175. See Warren, "Federal and State Court Interference", 43 Harv. L. Rev. 345, 372-77. That the injunction was a restraint of the parties and was not formally directed against the state court itself is immaterial. *Hill v. Martin*, 296 U. S. 393, 403. Cf. *Kohn v. Central Distributing Co.*, 306 U. S. 531. *Steelman v. All Continent Corp.*, 301 U. S. 278, pressed upon us by respondents and relied upon below, is plainly inapplicable.

Neither record nor findings below give any other basis for injunctive relief save the threatened injury implied in the state court lawsuit; and that could not be enjoined. The decree below is reversed, with directions to dismiss the bill.

Reversed.

The CHIEF JUSTICE, Mr. Justice McREYNOLDS and Mr. Justice ROBERTS adhere to the views expressed in their separate opinion in this case.

in rear of opinion dated 12/4/39

A true copy.

Test:

Clerk, Supreme Court, U. S.

MICRO CARD

TRADE

MARK



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